IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR

BENCH, JAIPUR.

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J U D G M E N T

Rahmat Vs. Imrat and ors.

S.B.CIVIL FIRST APPEAL NO.49/1988 AGAINST THE JUDGMENT AND DECREE DATED 14.9.87 PASSED BY ADDL. DISTRICT JUDGE, KISHANGARHBAS (ALWAR) IN CIVIL SUIT NO.34/86.

Date of Judgment : December 12th, 2006.

P R E S E N T

HON'BLE DR.JUSTICE VINEET KOTHARI

Ms.Shilpi Gupta for Mr.R.K.Mathur, for the appellant.
None present for the the respondents.

BY THE COURT:

1. This appeal is directed against the judgment & decree dated 14.9.1987 passed by learned Addl. District Judge, Kishangarhbas (Alwar) rejecting the civil suit no.34/86 filed by the plaintiff Rahmat S/o Hasan Khan seeking relief of specific performance for transfer of half share of agriculture land belonging to Mohar Khan of village Baghor, Tehsil-Tijara, Distt. Alwar.

2. According to the plaintiff-appellant, father of the defendant-respondents Imrat, Bhuru and Summa, Mr.Mohar

Khan agreed to sell half of agriculture land belonging to him to his three sons in equal share and remaining half share of the said land to the plaintiff Rahmat, for which the total consideration was Rs.40,000/- and out of half of which i.e. Rs.20,000/- the plaintiff paid sum of Rs.19,500/- to the father of defendants Mohar Khan and remaining Rs.500/- was to be paid at the time of registry of sale-deed to be executed by the said person. According to the plaintiff, he was also put in possession of the said half portion of the land. When the said person refused to execute the sale-deed and get it registered, the plaintiff filed the present suit. Nobody contested the said suit nor even written statement was filed on behalf of the respondents. Thus suit proceeded exparte against three sons of the executant Mohar Khan.

3. The learned trial court however rejected the suit on the ground that the said agreement appears to be doubtful because the agreement does not contain stipulation as to which half portion of the agriculture land was agreed to be sold to the plaintiff and which half portion is agreed to be sold to the sons of Mohar Khan. The learned trial court further observed that while PW-2 Rahmat and PW-3 Maida stated before the court that the said transaction took place in their presence, the document Ex.1 agreement

to sell, does not show PW-3 Maida to be attesting witness. Another assumption made by the learned trial court while rejecting the suit is that since the document Ex.1 does not state as to whether the said land is ancestral property or self-acquired property of executant Mohar Khan, therefore, this renders the agreement itself doubtful and no specific performance or enforcement of that agreement can be granted in favour of the plaintiff.

4. In the present appeal filed by the plaintiff before this court also nobody appears to oppose this appeal on behalf of the defendants.

5. Ms.Shilpi Gupta, learned counsel appearing on behalf of Mr.R.K.Mathur, Adv. Urged that so-called assumption and basis taken by the learned trial court to reject the suit filed by the plaintiff-appellant are wholly unsustainable in the eyes of law. It is submitted that production of even one attesting witness is enough in law and she relies upon the Judgments for this proposition i.e. AIR 1972 (Raj.) 25, AIR 1998 (HP)37 and AIR 1959 SC 443**. She urged that production of one attesting witness PW-2 Rahmat was sufficient to prove the genuineness and factum of execution of said agreement to sell. The non-mention of character of property being self-acquired or**

ancestral also does not affect the right to sell, she contended.

6. Having heard learned counsel for the appellant, and upon perusal of record, pleadings and after going through the statements of witnesses, this court is of the opinion that the present appeal deserves to be allowed and the judgment under appeal of trial court deserves to be set aside.

7. The execution of document Ex.1 Agreement to sell, cannot be doubted on flimsy ground like non-mentioning of averments whether the land in question was ancestral or self-acquired property of executant Mohar Khan. The perusal of Ex.1 document clearly shows that the executant has clearly stated that the said agriculture land is of his own Khatedari without any partnership or co-sharer and he is in sole possession of the agriculture land and said land is not also under any charge of mortgage, sale or gift etc. The said document also clearly stipulates that the consideration of Rs.39,000/- has been received by the executant in cash and possession of the respective portions has been handed over to the purchasers. In view of such part performance of this agreement, even on the strength of Sec.53-A of the Transfer of Property Act, the

said agreement becomes enforceable and binding between the parties. This court absolutely finds nothing on record which contradicts the factum of intention to sell half share of the said agriculture land to the plaintiff which is not only clearly stated in the said agreement but has been supported by various witnesses including the attesting witness PW-2 Rahmat. This court, therefore, finds that the stated reasons in the impugned judgment to reject the suit are not sustainable in law, therefore, the same deserves to be set aside.

8. Accordingly, this appeal is allowed. The impugned judgment dated 14.9.87 and the decree is set aside. The defendants, legal heirs of executant Mohar Khan shall now execute the registered sale-deed in respect of half share of the agriculture land in question in favour of the plaintiff-appellant within a period of six months from today upon payment of balance amount of Rs.500/- by the plaintiff-appellant. If defendants fail to execute and get the sale-deed registered in favour of the plaintiff-appellant, the trial court shall do it within a period of next six months and cost of registration, stamps etc., on the valuation of Rs.20,000/- shall be borne by the plaintiff-appellant. Decree be made accordingly.

9. With these observations, the appeal is allowed. No

order as to costs.

(Dr.VINEET KOTHARI)J.

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